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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8
9 Shannon L. Ramsland,) No. CV-24-00360-TUC-CKJ (MAA)
10 Petitioner,)
11 vs.) **REPORT AND
12 B. Hudson.) RECOMMENDATION**
13 Respondent.)
14 _____)

15 On July 19, 2024, the petitioner, an inmate confined in the Federal Correctional
16 Institution in Tucson, AZ, filed a Petition for Writ of Habeas Corpus pursuant to Title 28,
17 United States Code, Section 2241. Doc. 1. The petitioner, Shannon L. Ramsland, claims that
18 the Bureau of Prisons (BOP) unlawfully refuses to apply First Step Act (FSA) time credits to
19 his sentence.

20 Pursuant to the Rules of Practice of this Court, this matter was referred to the Magistrate
21 Judge for a report and recommendation. Doc. 5.

22 The petition should be denied. The BOP cannot apply First Step Act time credits to
23 Ramsland's sentence because he does not have a low or minimum recidivism risk score.

25 Discussion

26 In his petition, Ramsland asserts three interrelated grounds for relief: (1) "the futility
27 exception to exhaustion applies because [P]etitioner seeks to invalidate an official BOP policy

1 . . . where the BOP unlawfully altered ‘shall be applied’ and ‘shall transfer’ to ‘the Bureau may
 2 apply’ FSA [First Step Act] time credits in 28 C.F.R. § 523.44(b) without approval of
 3 Congress,” (2) “28 C.F.R. § 523.44(b) should be invalidated pursuant to *Ramirez v. Phillips*,
 4 2023 U.S. Dist. LEXIS 228778, at *5-15 (E.D.Cal. 2023) because granting FTCs [Federal Time
 5 Credits] to eligible prisoners is mandatory. . . ,” and (3) “under *Loper Bright Enterprises v.*
 6 *Raimondo*, 2024 U.S. Lexis 2882 (2024) this court has the power to strike down 28 C.F.R. §
 7 523.44(b).” Doc. 1 (punctuation modified).

8 The gravamen of Ramsland’s petition appears in Ground Two where he argues that the
 9 BOP improperly refuses to apply First Step Act (FSA) time credits to his sentence. The court
 10 begins there.

11 Ramsland asserts that “28 C.F.R. § 523.44(b) should be invalidated . . . because granting
 12 FTCs [Federal Time Credits] to eligible prisoners is mandatory” Doc. 1, p. 5 (punctuation
 13 modified). Apparently, Ramsland believes that under the First Step Act (FSA) he is entitled to
 14 federal time credits (FTCs), but they are not being applied to his sentence because 28 C.F.R. §
 15 523.44(b) uses the phrase “may apply” when discussing the application of FTCs. *Id.* And, he
 16 further believes that the BOP is relying on this regulation to justify its refusal to apply federal
 17 time credits to the sentences of medium/high risk prisoners such as himself. *Id.* Ramsland is
 18 mistaken. The BOP cannot apply FSA time credits to his sentence because he does not qualify
 19 under the explicit terms of 18 U.S.C. § 3624(g)(1)(D), which excludes¹ prisoners with a medium
 20 or high recidivism risk score from having federal time credits applied to their sentences. These
 21 prisoners are not “eligible” for a sentence modification. 18 U.S.C. § 3624(g)(1). The regulation
 22 is not the problem here.

23 “Under the FSA [First Step Act], an eligible inmate shall earn 10 days of time credits for
 24 every 30 days of successful participation in evidence-based recidivism reduction programming
 25 or productive activities.” *Martinez v. Gutierrez*, No. CV-22-00505-TUC-RM-AMM, 2023 WL
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27 ¹ There is an exception to this rule for prisoners who have a petition to be transferred approved
 28 by the warden. 18 U.S.C. § 3624(g)(1)(D)(i)(II). Ramsland does not assert that he falls under this
 exception.

1 6466490, at *3 (D. Ariz. July 14, 2023) (citing 18 U.S.C. § 3632(d)(4)), report and
 2 recommendation adopted, 2023 WL 6464850 (D. Ariz. Oct. 4, 2023). Those time credits,
 3 however, will only be applied to the inmate's sentence if he is "eligible." 18 U.S.C. §
 4 3624(g)(1). "[I]n the case of a prisoner being placed in prerelease custody," the prisoner is
 5 eligible if he "has been determined under the System to be a minimum or low risk to recidivate
 6 pursuant to the last 2 reassessments of the prisoner" or "has had a petition to be transferred to
 7 prerelease custody or supervised release approved by the warden of the prison . . ." 18 U.S.C.
 8 § 3624(g)(1)(D)(i)(I-II). "[I]n the case of a prisoner being placed in supervised release," the
 9 inmate must have "been determined under the System to be a minimum or low risk to recidivate
 10 pursuant to the last reassessment of the prisoner." 18 U.S.C. § 3624(g)(1)(D)(ii); *see Lopez v.*
 11 *Gutierrez*, 2024 WL 4026215, at *2 (D. Ariz. Sept. 3, 2024) (on appeal).

12 Ramsland has a *medium* recidivism risk score. Doc. 10-1, p. 3. He does not have a
 13 petition to be transferred approved by the warden. Doc. 10, p. 5. Accordingly, Ramsland is not
 14 "eligible" to have his earned time credits applied to his sentence. 18 U.S.C. § 3624(g)(1)(D).

15 Ramsland argues to the contrary that Section 3632(d)(4)(C) makes the application of
 16 earned time credits *mandatory* even for medium/high risk prisoners and this section trumps the
 17 eligibility requirements of Section 3624(g)(1)(D)(i)(II)(aa)-(cc). Doc. 1, p. 5. He is incorrect.
 18 Section 3632(d)(4)(C) does say that "[t]ime credits earned under this paragraph . . . *shall be*
 19 *applied* toward time in prerelease custody or supervised release." (emphasis added) But the
 20 next sentence in that section states that "[t]he Director of the Bureau of Prisons *shall* transfer
 21 *eligible* prisoners, *as determined under section 3624(g)*, into prerelease custody or supervised
 22 release." 18 U.S.C. § 3632(d)(4)(C) (emphasis added). Read as a whole, 18 U.S.C. §
 23 3632(d)(4)(C) states that time credits *shall* be applied to all *eligible* prisoners. Ramsland,
 24 however, is not an "eligible" prisoner "as determined under Section 3624(g)." *Id.* His time
 25 credits therefore cannot be applied to his sentence. Section 3632(d)(4)(C) and Section
 26 3624(g)(1)(D)(i)(II)(aa)-(cc) are not in conflict.

27 Ramsland cited *Ramirez v. Phillips*, 2023 U.S. Dist. LEXIS 228778, at *5-15 (E.D.Cal.
 28 2023) in support of his argument that 28 C.F.R. § 523.44(b) should be invalidated. Ramsland,

1 however, misreads the case. *Ramirez* holds that the BOP cannot take away an inmate's earned
 2 First Step Act federal time credits (FTCs) simply because he failed to complete a Residential
 3 Drug Abuse Program (RDAP). *See Ramirez v. Phillips*, 2023 WL 8878993, at *4 (E.D. Cal.
 4 Dec. 22, 2023) ("The government points to no authority allowing the BOP to cancel all FTCs
 5 earned by way of other programming solely because an inmate has not completed RDAP, and
 6 the court has not located any."). *Ramirez* does not comment on the operation of Section
 7 523.44(b). *Ramirez* is inapposite to the present case.

8 Ramsland is not eligible for a sentence modification under the First Step Act; his
 9 arguments about the wording of 28 C.F.R. § 523.44(b) are moot. His argument that he need not
 10 administratively exhaust his petition because he is challenging an official BOP policy is moot;
 11 his petition may be denied on the merits. Ramsland's argument that this court has the authority
 12 under *Loper Bright Enterprises v. Raimondo*, 2024 U.S. Lexis 2882 (2024) to strike down 28
 13 C.F.R. § 523.44(b) is also moot; the regulation is not the problem here.

14 In the Answer, the respondent argues, among other things, that the petition is now moot
 15 because the petitioner is no longer in BOP custody. The court is not convinced. The respondent
 16 does not specify Ramsland current status. If he is now on supervised release and if the court
 17 found that he is entitled to FSA time credits, it might be possible to apply those credits to his
 18 term of supervised release retroactively. *See LaPuente v. Derr*, 2023 WL 3821136, at *3 (D.
 19 Haw. June 5, 2023) ("[I]t is possible that, any time Petitioner served in custody beyond that
 20 which he should have due to a miscalculation of earned time credits could form part of the basis
 21 of any modification of his supervised release term."); *Marler v. Derr*, 2023 WL 2563147, at
 22 *6 (D. Haw. Mar. 17, 2023) ("[R]etroactive application of FSA time credits toward early home
 23 confinement appears to be well within the BOP's discretion."); *but see Zimmer v. Marske*, 2022
 24 WL 4016623, at *1 (W.D. Wis. Sept. 2, 2022) ("But I cannot use the earned-time credit that
 25 the BOP allegedly unlawfully failed to give Zimmer before his release to reduce his term of
 26 supervised release retroactively."). The court does not find that the petition as a whole is moot.

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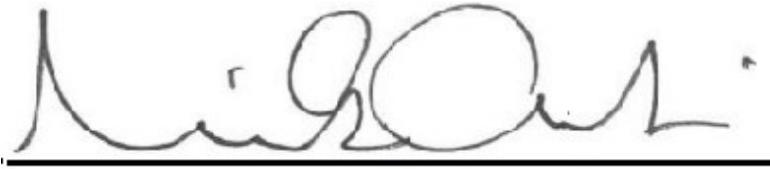
1 RECOMMENDATION

2 The Magistrate Judge recommends that the District Court, after its independent review
3 of the record, enter an order denying the petition. Doc. 1. Ramsland is not entitled to have his
4 First Step Act time credits applied to his sentence because he does not have a low or minimum
5 recidivism risk score.

6 Pursuant to 28 U.S.C. §636 (b), any party may serve and file written objections within
7 14 days of being served with a copy of this Report and Recommendation. If objections are not
8 timely filed, they may be deemed waived. The Local Rules permit a response to an objection.
9 They do not permit a reply to a response without the permission of the District Court.

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11 Dated this 28th day of October, 2024.

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18 Honorable Michael A. Ambri
19 United States Magistrate Judge

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